

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ALEX JOEL GARCIA

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

ALEX JOEL GARCIA,

Respondent-Appellant.

UNPUBLISHED

April 14, 2011

No. 300199

Wayne Circuit Court

Family Division

LC No. 01-404473-DL

Before: DONOFRIO, P.J., and CAVANAGH and STEPHENS, JJ.

MEMORANDUM.

Respondent was convicted of armed robbery, MCL 750.529, and possession of a firearm during the commission of a felony, MCL 750.227b. Following a prior appeal, see *In re Garcia*, unpublished opinion per curiam of the Court of Appeals, issued March 2, 2010 (Docket No. 287275), he was resentenced to consecutive prison terms of 81 to 135 months for the robbery conviction and two years for the felony-firearm conviction. Respondent appeals his sentence as of right. We affirm.

Respondent's sole claim on appeal is that the trial court erred in considering his criminal conduct as a juvenile to score ten points for offense variable (OV) 13, which considers whether the sentencing offense is part of a "continuing pattern of criminal behavior." MCL 777.43(1). We disagree.

The interpretation and application of the sentencing guidelines present questions of law subject to de novo review on appeal. *People v Cannon*, 481 Mich 152, 156; 749 NW2d 257 (2008). Ten points were assessed for OV 13 because "[t]he offense was part of a pattern of felonious criminal activity involving a combination of 3 or more crimes against a person or property or" a controlled substance offense. See former MCL 777.43(1)(c), now MCL 777.43(1)(d). The instructions provide that "all crimes within a 5-year period, including the sentencing offense, shall be counted regardless of whether the offense resulted in a conviction." MCL 777.43(2)(a). Contrary to respondent's assertion, criminal offenses committed as a juvenile can be considered in scoring OV 13. *People v Lockett*, 485 Mich 1076; 777 NW2d 163 (2010) (YOUNG, J., concurring); *People v Harverson*, ___ Mich App ___, ___ NW2d ___

(Docket No. 293014, issued December 28, 2010). Thus, the trial court did not err in considering respondent's juvenile adjudications, which support the court's ten-point score for OV 13.

Affirmed.

/s/ Pat M. Donofrio

/s/ Mark J. Cavanagh

/s/ Cynthia Diane Stephens